

APPEAL NO. 031384
FILED JULY 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 30, 2003. With respect to the issue before him, the hearing officer determined that the appellant's (claimant) compensable injury of _____ does not include a chemical toxic exposure injury in the form of neurodermatitis, toxic solvent exposure, immune deregulation, chemical sensitivity, autonomic system dysfunction, or neuropsychological disorders. In his appeal, the claimant essentially argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. In addition, the claimant argues that the hearing officer erred in admitting the carrier's exhibits in evidence and in permitting Dr. T, the doctor who examined the claimant at the request of the carrier, to testify at the hearing. Finally, the claimant argues that he was not provided a complete set of audiotapes of the hearing held on April 30, 2003. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Initially, we consider the claimant's assertion that the copy of the audiotape of the April 30, 2003, hearing was incomplete. In his appeal, the claimant makes the bald assertion that the tape of the hearing was incomplete and that it was "very clear that the audio tapes have been tampered with" He did not identify what portion of the hearing was not included in the copy of the hearing tape. However, even if a portion of the hearing was not included in the copy of the tape given to the claimant, we cannot agree that such an omission would necessitate reversal in this instance. There was a court reporter at the hearing and the record included a complete transcript of the hearing. Thus, we were able to review the hearing in its entirety in making our decision and, as such, we perceive no error.

The claimant also argues on appeal that the carrier's exhibits were improperly admitted in evidence and that Dr. T should not have been permitted to testify. However, the claimant did not object at the hearing either to the exhibits or to Dr. T's testimony. Therefore, he did not preserve any error associated with the admission of the exhibits or Dr. T's testimony for purposes of appeal.

The hearing officer did not err in determining that the claimant's compensable injury does not include injury in the form of neurodermatitis, toxic solvent exposure, immune deregulation, chemical sensitivity, autonomic system dysfunction, or any neuropsychological disorder. The claimant had the burden of proof on that issue and it presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and

credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence on the issue of whether the compensable injury extended to the conditions at issue. The hearing officer determined that the credible evidence did not establish a causal connection between the claimed conditions and the claimant's occupational disease injury of _____. The hearing officer simply was not persuaded that the claimant sustained his burden of proof on the extent-of-injury issue. The hearing officer was acting within his province as the fact finder in so finding. In the bulk of the claimant's appeal, he points to problems and inconsistencies he believes exist in Dr. T's report and argues that the hearing officer should have given greater weight to the reports of his treating doctor, Dr. R. It was a matter for the hearing officer to determine the weight to give to the respective opinions of Dr. T and Dr. R. As the fact finder, the hearing officer was free to give greater weight to Dr. T's report and her testimony than to the conflicting evidence from Dr. R. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the extent-of-injury determination on appeal. Pool, *supra*; Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge